THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No. 21141of 2003

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Dated: 27th Day of July 2005

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M.Prabhu Das, S/O Janardhan Rao, aged 48 years, r/o Thulluru, Guntur District.

Petitioner

And

The District Collector, Guntur, Guntur District.& others.

Respondents.

THE HON'BLE SRI JUSTICE K.C. BHANU

W.P.No. 21141 of 2003

O R D E R:

This Writ Petition is filed challenging the impugned proceedings dated 10.9.2003, on the file of the 4th respondent and to quash the same, by declaring the action of the respondents 1 to 3 in not taking any action against the 4th

respondent for acting contrary to the regulations issued by the Registrar, as illegal and arbitrary.

Before adverting to the question as to whether the impugned proceedings of the 4th respondent suffers from any legal infirmity requiring any correction as such by this Court, in exercise of its writ jurisdiction, it may be necessary, briefly, to note the relevant facts leading to the filing of this writ petition:

The petitioner was initially appointed as Secretary on 4.1.1978 under 'Half a Million Job Scheme' and posted at Bandarupalli Primary Agricultrual Co-operative Society (PACS). Thereafter, while working in the 4th respondent society, the petitioner was issued a charge memo dated 25.4.2000, under Section 52 of A.P. Co-operative Societies Act, leveling five charges against him alleging misappropriation of funds of the Society. Based on the inspection report, the petitioner submitted his explanation on 8.5.2000. A domestic enquiry was conducted against the petitioner, wherein the charges were proved and the society recommended for disciplinary action. On that the 4th respondent society issued notice dated 16.8.2003, for which the petitioner submitted explanation dated 3.9.2003. Without considering the explanation of the petitioner, the 4th respondent society passed the impugned proceedings recording resolution for dismissal of the petitioner. In fact, earlier, the petitioner was suspended on the same grounds vide order dated 25.4.1994 and thereafter a removal order was passed, but in the appeal the said order was set aside. The petitioner contended that now the impugned orders were passed without any reference of the earlier proceedings. The petitioner further contended that he has not misappropriated any funds of the society and that he gave a proper explanation for the charges leveled against him. That explanation was not taken into consideration by the disciplinary authority while passing the impugned order and further it is contended that the petitioner has already deposited the amount. The petitioner further pleaded that the punishment imposed is disproportionate to the proved misconduct.

The 3rd respondent filed a counter affidavit contending that the petitioner has got alternative and effective remedy as per the byelaws of the society under 12(3), is the appeal lies against the removal orders issued by the society. The

petitioner in his deposition dated 8.5.2000 accepted that the cash balance of Rs.2,53,191/- shown in cash book for the year 1994-95 at page No.17 dated 23.4.1994 is correct and he had to account for the same and requested to recover the said amount from his salaries due to be paid. The Domestic Enquiry Officer had examined all the concerned witnesses. The Managing Committee Meeting of the 4th respondent society dated 9.9.2003 resolved to remove the petitioner from the post of Secretary of Nelapadu P.A.C.S. The 4th respondent society conducted the domestic enquiry strictly in accordance with the 'Act' and 'Rules' while imposing penalty of an order of dismissal of the petitioner for the alleged misappropriation of funds relating to the society. Hence, 3rd respondent prayed to dismiss the Writ Petition.

The learned counsel appearing for the petitioner contended that the petitioner has not misappropriated any amount of the society and that he gave a proper explanation for the charges leveled against him, and that the explanation has not been taken into consideration by the disciplinary authority while passing the impugned order and further it is contended that the petitioner had already deposited the amount. The society alleged certain lapses on the part of the petitioner but the punishment imposed is disproportionate to the proved misconduct. The charges leveled against the writ petitioner are that during the year 1994-95 he was arrived cash balance of Rs.2,53,191/- in the cash book and the cash balance was not remitted in the bank. The second charge is that he has irregularly issued *benami* loans for an amount of Rs.98,916/- and thirdly, he has not re-credited an amount of Rs.44,371/- to the cash book in which collections were made through the receipt book. Fourthly, he has not accounted for an amount of Rs.73,128/- and lastly he has debited an amount of Rs.2,800/- without vouchers. Regular departmental enquiry was conducted on the said charges. The enquiry officer, after conducting enquiry, submitted his report to the disciplinary authority. The disciplinary authority issued a show-cause notice and after calling for the explanation with regard to the proposed punishment, and then the Managing Committee passed the impugned order.

It is not the case where the violation of principles of natural justice in conducting the domestic enquiry. It is not a case where the findings are not

shown to have been without any evidence. The manner of conducting enquiry and that the findings of the enquiry officer are based upon the evidence have not been challenged. Even the petitioner admitted that there was a cash balance of Rs.2,53,191/- in the cash book in the year 1994-95, but he only requested the authorities to recover the said amount from his salary. The person in-charge committee passed the resolution on 27.1.1999 and resolved to admit the petitioner on the ground that the alleged misappropriated amount can be recovered from the salary of the petitioner and with that condition he was admitted into the Society. This creates a doubt as to whether the petitioner has really misappropriated the amount or not. Since the departmental enquiry proceedings have not been challenged on the grounds of violation of principles of natural justice, there is no need to interfere with the findings of the enquiry officer, which was also accepted by the disciplinary authority.

The case of the writ petitioner is that the amounts which were found missing have been drawn from the society, after taking necessary permission from the society. Therefore, there is no misappropriation. However, that aspect has to be considered by the disciplinary authority. Since the findings are in conformity with the material evidence available in the enquiry, the findings need not be disturbed. In view of the fact that the petitioner himself admitted that he has withdrawn certain amount on the specific instructions of the society that has to be looked into by the society. Therefore, the disciplinary authority is required to take note of, as to under what circumstances the petitioner had withdrawn the amount and not account for the cash balance, and pass appropriate punishment, so far as the limited purpose in awarding such punishment. Considering all the facts and circumstances, the matter is remitted back to the disciplinary authority, setting aside the punishment only.

The Writ Petition is allowed to the extent indicated above. In the circumstances, no order as to costs.

JUSTICE K.C. BHANU

27th July 2005

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